

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 555 – HB 692

March 18, 2013

SUMMARY OF ORIGINAL BILL: Changes the language referring to individuals with a disability from “disabled person” to “person with a disability” throughout Title 34, Chapters 1 and 3.

Makes various changes to the law governing conservatorships including the following:

- clarifies that a conservator can be an entity as well as an individual;
- specifies that a conservatorship proceeding must remove the decision-making powers and duties of a person with a disability in a least restrictive manner;
- adds requirements relative to the contents of court issued letters of conservatorship;
- authorizes a guardian ad litem to be appointed even if the respondent is represented by counsel and specifies that the guardian ad litem acts as an agent of the court;
- expands the persons or entities that must receive notice of an appointment of a fiduciary and notice of a hearing;
- requires that the guardian ad litem interview the respondent in person and make detailed findings as enumerated, including the integrity of the fiduciary;
- specifies that the costs of the guardian ad litem’s investigations and other costs will be charged against the respondent’s property or the petitioner or other party in the court’s discretion;
- authorizes a court to appoint an emergency guardian or conservator for no more than sixty days and authorizes the appointment without notice to the respondent if the respondent receives notice within 48 hours of the appointment;
- authorizes a respondent to request that the respondent’s health and financial information be placed under seal;
- enumerates various rights that may be removed from a respondent and vested in a conservator, including the right to apply for public benefits;
- authorizes a court to require that a person with a disability submit to an examination prior to a hearing to remove or modify the duties of a conservator; and
- terminates a conservatorship or fiduciary relationship if the conservator or fiduciary is sentenced to imprisonment.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SB 555 – HB 692

SUMMARY OF AMENDMENT (004915): Specifies that the bill does not supersede the Adult Protection Act or the orders of a court pursuant to such act. Includes an institution where a respondent is living in the notice requirement for appointment of a fiduciary. Any person, institution, or residential provider having care or custody of the respondent is included in the notice requirement imposed on the guardian ad litem relative to appointment of a conservator. Specifies that a guardian ad litem may be appointed by a court in any proceeding and that a guardian ad litem must be appointed on the filing of a petition for appointment of a fiduciary unless the respondent is represented by counsel who has made an appearance on behalf of the respondent. If the respondent is represented by counsel, then the court may, depending on the best interests of the respondent, choose to continue the services of the guardian ad litem or waive appointment or terminate the services of the guardian ad litem. Specifies that mental health law means court ordered involuntary commitment for care and treatment pursuant to Title 33. Specifically identifies the provisions that are amended by changing the language “disabled person” to “person with a disability”. Changes “must” to “shall” and corrects a typographical error in Section 24 of the bill.

Adds a district public guardian as described by Tenn. Code Ann. § 34-7-104 to the list of persons the court should consider for appointment as a conservator in current law. Adds to current law that the court is required to explain in the court’s order naming the conservator the reasoning for appointing a person other than the specific persons listed.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from original fiscal note.

Assumptions for the bill as amended:

- According to the Department of Intellectual and Developmental Disabilities (DIDD), the requirements relative to the guardian ad litem’s investigation could increase costs incurred by DIDD and the authority of a court to appoint an emergency guardian or conservator could decrease expenditures; however, the total fiscal impact on the DIDD will be not significant.
- According to the Department of Mental Health and Substance Abuse Services (MHSAS), the fiscal impact of the proposed legislation on MHSAS will be not significant. Two entities provide conservators to MHSAS for certain longer-term patients at regional mental health institutes (RMHIs) who have been deemed to lack capacity by a treatment review committee. If appointments are delayed due to a guardian ad litem’s review, then MHSAS may need to alter its appointment procedures.

- According to the Department of Human Services (DHS), the fiscal impact of the proposed legislation on DHS will be not significant. The Tennessee Adult Protection Act governs DHS's actions relative to adult protective services.
- According to the Commission on Aging and Disability, the fiscal impact of the proposed legislation on the Commission will be not significant.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

/ehu